

FILED

To: Honorable Judge Steven Rhodes  
From: Phyllis L Hernandez  
Case # 10-009510-CZ  
Re: Demand for Jury trial  
July 27, 2014

2014 AUG -4 P 12: 50

U.S. BANKRUPTCY  
E.D. MICHIGAN-DETROIT

**“ Letters.** Letters to the Judge are discouraged; written communications should be made only by pleadings. Copies of correspondence between counsel shall not be sent to the Judge and will be discarded. Letters to the Judge from pro se litigants may, at the Judge's discretion, be treated as pleadings and docketed as such.”

On August 18, 2010 a case was filed on my behalf against the City of Detroit for violation of the Michigan Antitrust law. I was the owner of a small struggling Detroit based towing company in Detroit from 1998-2012. My attempts for over a decade to get a Detroit Police Authorized towing contract, which is a multimillion dollar industry were rejected due to City of Detroit corruption and the existence of a Detroit Police towing monopoly owned by Gasper Fiore with 7 different companies with comingled assets all with police contracts. For over a decade I went before the Detroit Police Commissioners with massive proof of corruption as well as the Detroit City council only to have it fall on intentional deaf ears. It did appear that the Board of Commissioners was trying to stop it for several years with the development of a “Towing task force” but after 2 commissioners filed police reports after feeling threatened and 1 refused to vote anymore a new set of towing rules were established but never followed. Former Police Commissioner Jerome Warfield said “we can write the rules but if you can tell me a way to make them follow them we will”. As we also know there was an

indictment against former Mayor Kwami Kilpatrick for towing corruption after the FBI encouraged Gasper Fiore to testify before a grand jury that he was giving payoff's to Kilpatrick or as he said " extortion" which was dismissed when Kilpatrick tried to hold up the trial by trying to fire his attorney. My case was heard in the 3<sup>RD</sup>Circuit Court by Judge Robert Ziolkowski and the City of Detroit was denied summary judgment claiming governmental immunity from the Michigan Antitrust law. As you sit in your chambers going through God only knows how much paperwork to try and get the City back on its feet the corruption continues worse than before the Bankruptcy with not only Gasper Fiore and his monopoly of towing companies we now have another monopoly forming bigger than his. The corruption is so bad that Detroit City Council members (Gary Brown's committee) elected Jack Morton to the Towing rate commission who is a former, fired Detroit Police Officer in 1984. I have boxes of proof of corruption that will not be filed away allowing history to repeat itself with the continuation of this corruption and the City of Detroit attempting to hide my case in its bankruptcy from you and the citizens of Detroit. I respectfully ask that the stay of proceedings on my case be lifted and my case be transferred to the Supreme Court of the United States of America for the City of Detroit's violation of the Federal Antitrust law.

After reviewing the federal laws I found that the Michigan Antitrust Act is derived from the Federal Sherman Act which states:

Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiring to monopolize. Any such act constitutes a felony. A monopoly conviction requires proof of the individual having intent to monopolize with the power to monopolize, regardless of whether the individual actually exercised the power.

Federal Trade Commission:

The Sherman Act outlaws "every contract, combination, or conspiracy in restraint of trade," and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize." Long ago, the Supreme Court decided that the Sherman Act does not prohibit every restraint of trade, only those that are *unreasonable*. For instance, in some sense, an agreement between two individuals to form a partnership restrains trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. On the other hand, certain acts are considered so harmful to competition that they are almost always illegal. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids. These acts are "*per se*" violations of the Sherman Act; in other words, no defense or justification is allowed.

Federal Trade Commission:

"The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice. Criminal prosecutions are typically limited to intentional and clear violations such as when competitors fix prices or rig bids. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and \$1 million for an individual, along with up to 10 years in prison. Under federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over \$100 million."

Federal Trade Commission

"Final decisions issued by the Commission may be appealed to a U.S. Court of Appeals and, ultimately, to the U.S. Supreme Court. If the Commission's position is upheld, the FTC, in certain circumstances, may then seek consumer redress in court. If the company violates an FTC order, the Commission also may seek civil penalties or an injunction."

## The Michigan Antitrust law is also derived from the Clayton Act:

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates (that is, the same person making business decisions for competing companies). Section 7 of the Clayton Act prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly." As amended by the Robinson-Patman Act of 1936, the Clayton Act also bans certain discriminatory prices, services, and allowances in dealings between merchants. The Clayton Act was amended again in 1976 by the Hart-Scott-Rodino Antitrust Improvements Act to require companies planning large mergers or acquisitions to notify the government of their plans in advance. The Clayton Act also authorizes private parties to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.

## 15 U.S. Code § 1 - Trusts, etc., in restraint of trade illegal; penalty

**Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court. Private Parties**

### Federal Trade Commission

"Private parties can also bring suits to enforce the antitrust laws. In fact, most antitrust suits are brought by businesses and individuals seeking damages for violations of the Sherman or Clayton Act. Private parties can also seek court orders preventing anticompetitive conduct (injunctive relief) or bring suits under state antitrust laws. Individuals and businesses cannot sue under the FTC Act."

# 11 U.S. Code § 362 - Automatic stay

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

## Amendment 14

Civil rights

**Section 1.** All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I have inclosed former City of Detroit Auditor General Joe Harris's reports on Detroit Police towing corruption and monopolization of contracts allowed by the Detroit Police and the City of Detroit

Sincerely:

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